IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST.NO.8642 OF 2007

New India Assurance Co.Ltd. ...Appellant

vs.

Dattatraya Namdeo Yadav
Ashok Devendra Bhosale
Balasaheb Ganapati Daingade
Shrishailya Nagu Mali ...Respondents

Mr.S.M.Vidyarthi for the Appellant
Mr.Anilkumar Patil for Respondent No.1

CORAM: A.S.OKA,J.
DATE : DECEMBER 11,2007.

ORAL JUDGMENT:

1. Heard the learned Advocate for the Appellant and the learned Advocate for the first Respondent.

2. In this Appeal the Appellant-insurer of the vehicle involved in the accident has taken an exception to the Judgment and Award dated 19th December 2006 passed by the learned Member of the Motor Accident Claims Tribunal at Sangli. The first Respondent is the original claimant who filed the claim petition claiming compensation on account of personal injuries sustained by him as a result of accident which took place on 4th July 1996. The tribunal awarded compensation of Rs.1,50,000/- (inclusive of no fault liability) together with interest at the rate of 7.5% p.a.

3. The submission of the learned Advocate for the Appellant is that the policy of insurance in respect of the offending vehicle was issued on 1st July 1995 for a period of one year which expired on 30th June 1996. He submitted that due to accidental error on the part of the concerned Clerk of the Insurance company, the date of expiry of the policy was shown as 30th July 1996 instead of 30th June 1996. He submitted that the policy of insurance could not have been for a period of more than one year and therefore, the Appellant-Insurance company is not liable to satisfy the Award which is made against the insurer.

4. I have considered the submissions. It is an admitted position that the policy of insurance shows that the policy was in force till 30th July 1996. Even assuming that there was an error while mentioning the date of expiry of the policy, the liability of the Appellant-insurance company towards a third party like the first Respondent continues to exist and the Appellant-insurance company is not absolved from its liability towards a third party. It must be also stated that there is nothing on record to show that any attempt was made by the Appellant-insurance company to rectify the alleged mistake till 30th July 1996.

5. In this view of the matter, there is no merit in the contention raised by the appellant. Appeal is accordingly

dismissed with no order as to costs.

6. As the Appellant has deposited the entire amount of compensation with the concerned Tribunal, a sum of Rs.25,000/- deposited in this court shall be refunded to the Appellant.

7. At this stage, the learned Advocate for the Appellant prayed that a liberty may be granted to recover the compensation amount from the insured without filing a separate suit by executing the impugned Award. The said prayer cannot be acceded to as it is not brought on record that the alleged mistake as regards the date of expiry of the policy was rectified by the Appellant. However, it is open for the Appellant to file appropriate proceedings in that behalf against the insured.

JUDGE